

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application Serial No. .... 09/689,222  
Filing Date .....October 11, 2000  
Confirmation No.....7951  
5 Applicant..... Prom KS Mgmt Limited Liability Company  
Inventorship .....Siddhartha Nag, et al.  
Group Art Unit.....2445  
Examiner .....Swearingen, Jeffrey R.  
Attorney's Docket No. .... PROM0005  
10 Title: Graphical User Interface (GUI) for Administering a Network Implementing  
Media Aggregation

**PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**

15

To: Commissioner for Patents  
Mail Stop Patent Ext.  
P.O. Box 1450  
20 Alexandria, VA 22313-1450

From: Allan T. Sponseller (Tel. 509-755-7255; Fax 509-755-7252)  
Sadler, Breen, Morasch & Colby, p.s.  
601 W. Main Avenue, Suite 1300  
25 Spokane, WA 99201

**Customer No. 75671**

30 Pursuant to 37 C.F.R. §§ 1.181 and 1.705(b) and  
35 U.S.C. § 154(b)(3)(B)(ii), Applicant hereby petitions the Commissioner for  
reconsideration of the patent term adjustment in Application Serial  
No. 09/689,222.

In a Notice of Allowance mailed in this application on June 15, 2010, a  
35 patent term adjustment of 785 days is indicated. Applicant submits that this patent  
term adjustment calculation is in error and that for the reasons discussed below,  
Applicant is entitled to a patent term adjustment of 1236 days.

Pursuant to 37 C.F.R. § 1.705(b)(1), Applicant includes herewith the  
requisite fee as set forth in 37 C.F.R. § 1.18(e).

Pursuant to 37 C.F.R. § 1.705(b)(2)(ii), in the attached Exhibit A Applicant presents a listing of the relevant dates as specified in §§ 1.703(a) through (e) for which the patent term adjustment is sought and the patent term adjustment as specified in § 1.703(f) to which Applicant submits the forthcoming patent is entitled. The basis or bases under 37 C.F.R. § 1.702 for which patent term adjustment is sought is also included in Exhibit A pursuant to 37 C.F.R. § 1.705(b)(2)(i). Exhibit A lists relevant dates in the format of the date on which a particular event occurred (the “Date” column), the deadline in accordance with 37 C.F.R. § 1.702 for taking action in response to that event (the “Deadline” column), and the date action in response to that event was actually taken (the “Actual” column). The adjustment (in days) for which patent term adjustment is sought for each event for which the deadline for taking action was earlier than the date action was actually taken is listed in the “Credits (days)” column.

Additionally, in determining the amount of patent term adjustment to which a patent is entitled, the USPTO must consider both the “guarantee of prompt patent and trademark office responses” and the “guarantee of no more than 3-year application pendency.” 35 U.S.C. § 154(b)(1)(A) and (B). To determine a correct patent term adjustment in view of these statutory guarantees, the USPTO must consider the amount of time associated with each of these guarantees minus applicable overlap. Wyeth, et al. v. Dudas, 580 F. Supp. 2d 138 (affirmed by Wyeth, et al. v. Kappos, Fed. Cir. 2010, 09-1120).

As indicated in Exhibit A, the present application was filed on October 11, 2000. The patent term adjustment for the forthcoming patent is entitled to a credit for any time period in excess of 3 years of application pendency. In the present case, this time period is calculated from October 11, 2003 (3 years after the filing date) until the issue date. During the course of prosecution of the present application, Applicant filed a request for continued examination on April 30, 2007, thus triggering the issue date provision for purposes of determining the patent term

adjustment. 35 U.S.C. § 154(b)(1)(B)(i). Accordingly, as part of the patent term adjustment calculation, the forthcoming patent is entitled to a credit for the time period occurring between October 11, 2003 (3 years from the filing date) and April 30, 2007. As indicated in Exhibit A, this time period is 1297 days.

5 The time period occurring between October 11, 2003 (3 years from the filing date) and April 30, 2007 (filing of the request for continued examination) overlaps the time period occurring between December 11, 2001 (14 months from the filing date) and February 9, 2004 (mailing of the first Office Action). The time period of this overlap is between October 11, 2003 and February 9, 2004, which is  
10 121 days. This overlap is indicated in the “Overlapping Delays (As per Wyeth Judgment)” row in Exhibit A.

Pursuant to 37 C.F.R. § 1.705(b)(2)(iii), it is noted that the present patent application is not subject to a terminal disclaimer.

15 Pursuant to 37 C.F.R. § 1.705(b)(2)(iv), in the attached Exhibit A, Applicant presents a listing of circumstances that may result in a reduction of overall patent term adjustment due to Applicant’s delay in concluding prosecution of this application.

20 Accordingly, and in view of the facts presented above and in attached Exhibit A, Applicant hereby requests reconsideration of the patent term adjustment indicated in the Notice of Allowance and requests a patent term adjustment for the forthcoming patent of 1236 days.

25 Respectfully Submitted,

Date: September 13, 2010

By: /Allan T. Sponseller, Reg. #38,318/  
Allan T. Sponseller  
Reg. No. 38,318

Patent Term Adjustment (Application No. 09/689,222)						
Title: GRAPHICAL USER INTERFACE (GUI) FOR ADMINISTERING A NETWORK IMPLEMENTING MEDIA AGGREGATION						
Date	Event	Rule	Deadline	Actual	Credits (days)	Debits (days)
10/11/2000	Initial Filing	14 months PTO initial action [37 CFR §1.702(a)(1)]	12/11/2001	2/9/2004	790	
		3 years PTO patent issue [37 CFR §1.702(b)]	10/11/2003	4/30/2007	1297	
2/9/2004	Non-Final Rejection	3 months applicant response	5/9/2004	7/9/2004		61
7/9/2004	Amendment/Req. Reconsideration- After Non-Final Rejection	4 months PTO response [37 CFR §1.702(a)(2)]	11/9/2004	11/10/2004	1	
9/2/2004	Information Disclosure Statement (IDS) Filed (SB/08)	4 months PTO response	9/2/2004	11/10/2004		55
11/10/2004	Final Rejection	3 months applicant response	2/10/2005	1/19/2005		
1/19/2005	Amendment After Final	4 months PTO response	5/19/2005	4/5/2005		
4/5/2005	Requirement for Restriction/Election	3 months applicant response	7/5/2005	5/5/2005		
5/5/2005	Response to Election / Restriction Filed	4 months PTO response	9/5/2005	7/26/2005		
7/26/2005	Final Rejection	3 months applicant response	10/26/2005	9/26/2005		
9/26/2005	Amendment/Req. Reconsideration- After Non-Final Reject	4 months PTO response	1/26/2006	6/5/2006		
6/5/2006	Advisory Action (PTOL-303)	3 months applicant response	9/5/2006	10/27/2006		
10/27/2006	Abandonment	2 months applicant response	12/27/2006	4/30/2007		642
4/30/2007	Petition for review by the Office of Petitions and request for continued examination filed	4 months PTO response [37 CFR §1.702(a)(2)]	8/30/2007	1/30/2008	153	
1/30/2008	Non-Final Rejection	3 months applicant response	4/30/2008	4/30/2008		

4/30/2008	Amendment/Req. Reconsideration- After Non-Final Reject	4 months PTO response	8/30/2008	7/31/2008		
7/31/2008	Supplemental Final Rejection	3 months applicant response	10/31/2008	10/31/2008		
10/31/2008	Amendment Submitted/Entered with Filing of CPA/RCE	4 months PTO response	2/31/2009	1/27/2009		
1/27/2009	Non-Final Rejection	3 months applicant response	4/27/2009	6/25/2009		59
6/25/2009	Amendment/Req. Reconsideration- After Non-Final Reject	4 months PTO response [37 CFR §1.702(a)(2)]	10/25/2009	11/10/2009	16	
8/25/2009	Information Disclosure Statement (IDS) Filed	3 months applicant response	6/25/2009	8/25/2009		61
11/10/2009	Final Rejection	3 months applicant response	2/10/2010	1/8/2010		
1/8/2010	Amendment After Final	4 months PTO response	5/8/2010	1/27/2010		
1/27/2010	Notice of Allowance and Fees Due (PTOL-85)	3 months applicant response	4/27/2010	4/26/2010		
4/26/2010	Amendment Submitted/Entered with Filing of CPA/RCE	4 months PTO response	8/26/2010	6/15/2010		
5/18/2010	Information Disclosure Statement (IDS) Filed	3 months applicant response	4/26/2010	5/18/2010		22
6/15/2010	Notice of Allowance and Fees Due (PTOL-85)	3 months applicant response	9/15/2010			
Note: PTA calculations are based on the date of Notice of Allowance Mailed				Total	2257	900
				PTA (Credit Days - Debit Days)	1357	

Total regular prosecution delays plus 3 year delays	1357
Overlapping Delays (As per Wyeth Judgment)	121
Total Applicable PTA	1236